



Town of Barnstable Police Department



Matthew K. Sonnabend, Chief of Police
Sean E. Balcom, Deputy Chief of Police

P.O. Box B
Hyannis, MA 02601

Main Number: 508-775-0387
Main Fax: 508-790-4167
Administration: 508-775-0920
Admin. Fax: 508-790-6317
www.barnstablepolice.com

December 11, 2018

Curtis Waltman
MuckRock News
DEPT MR 64564
411A Highland Avenue
Somerville, MA 02144-2516

Dear Mr. Waltman:

On December 2, 2018, we received your request pursuant to the Massachusetts Public Records Law for the following records:

- 1) All policies regarding Taser deployment.
- 2) All policies regarding the keeping of statistics and data concerning the deployment and use of Tasers.
- 3) Any relevant reports (after-action, etc) regarding the individual cases that a Massachusetts State Police officer used a Taser.
- 4) All data kept on the deployment of Tasers within the department. This includes any data on how many are used, which divisions receive them, what circumstances require Tasers, and how often they are used.

Our response to your four (4)-part request is as follows:

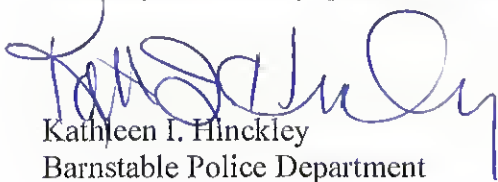
- 1) Our procedure regarding Taser deployment is attached. (Procedure 502.1)
- 2) Our policy regarding the keeping of statistics and data concerning the deployment and use of Tasers is attached. (Policy and Procedure 502)
- 3) Not applicable. Our department does not have any reports on cases that involve a Massachusetts State Police Officer and a Taser.
- 4) Please be advised that this department does not have possession, custody or control of the records requested. The mandatory disclosure provision of the Public Records Law only applies to information that is in the custody of the Department at the time the request is received. As a result, there is no obligation for a Department to create a record for a requestor to honor a request. See G.L. c.4, section 7(26) (defining "public records" as materials which have already been "made or received" by a public entity); see also 32 Op. Attorney General 157, 165 (May 18, 1977) (custodian is not obliged to create a record in response to a request for information); see also A Guide to the Massachusetts Public Records Law, Secretary of the Commonwealth, Division of Public Records, p. 7 (January 2013) (hereinafter Public Records Guide). As a result, the Department is unable to respond to your

request. However, the records requested may be in possession, custody or control of the following department/agency:

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Office of Grant + Research
Research and Policy Analysis Division
Ten Park Plaza, Suite 3720
Boston, MA 02116

Please be advised that pursuant to 950 CMR 32.00 and G.L. c. 66, section 10A(a) you have the right to appeal this decision to the Supervisor of Public Records within 90 calendar days. Such appeal shall be in writing, and shall include a copy of the letter by which the request was made and, if available, a copy of the letter by which the custodian responded. Pursuant to G.L. c. 66, section 10A(c), you also have the right to seek judicial review by commencing a civil action in the Superior Court.

Should you have any questions please do not hesitate to contact me. Thank you.



Kathleen I. Hinckley
Barnstable Police Department
1200 Phinney's Lane
Hyannis, MA 02601
508-778-3830

hinckleyk@barnstablepolice.com

cc: Ann Quirk, Town Clerk, RAO



BARNSTABLE POLICE DEPARTMENT

POLICY AND PROCEDURE 502

RESPONSE TO RESISTANCE

Original Date of Issue: 11/17/2003

Revised: 03/10/2006; 03/16/2007; 08/07/2008;
05/07/2014

Effective Date: 07/25/2014

Accreditation Standards: 1.2.2; 1.3.1-1.3.8; 1.3.13

1.0 Background

The Barnstable Police Department places the highest value on the lives and safety of its officers and the public. Officers are confronted daily with situations requiring a response to resistive or violent behavior to effect an arrest or ensure public safety.

The objective of a response to resistance is to maintain and/or re-establish control over a situation.

The degree of force used is dependent upon the facts and circumstances surrounding the situation an officer faces.

2.0 Policy

1.2.2
1.3.1
1.3.4

All personnel of the Barnstable Police Department will use reasonable force when force is used to accomplish lawful objectives. Such force is used to control and terminate unlawful resistance, and to prevent or cease any attack against the officer(s) or another person. This includes the use of deadly and/or less lethal force with lethal and less lethal weapons.

The use of any weapon, lethal or less lethal, while performing departmental duties is restricted to sworn personnel.

No policy or procedure for deadly or less lethal force can cover every situation officers may encounter. Officers are expected to respond to all situations decisively and use proper judgment, restraint, and competence, whatever the level of force required.

3.0
Definitions

For this policy, the following definitions apply:

Active Resistance

Advanced level of non-compliance, where a subject's resistance is increased in scope or intensity, and includes energy-enhanced and physical or mechanical defiance.

Appropriate Medical Aid

Situationally-dependent and may include increased observation to detect obvious changes in condition, flushing chemical agents from the eyes, applying first aid, evaluation by EMS personnel, or for more serious or life-threatening incidents, immediate aid by medical professionals.

Deadly Force

The degree of force likely to result in death or serious physical injury.

Less Lethal Force

Force that is not likely to cause serious physical harm or death. It includes the use of approved defensive/physical tactics, chemical substances, Electronic Control Devices (ECD), the baton, Specialty Impact Munitions (SIM) and the K-9.

Passive Resistance

The preliminary level of non-compliance, where a subject, although non-compliant, offers no physical or mechanical energy enhancement toward the resistant effort.

Reasonable Belief

The known facts and circumstances that would cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

Serious Physical Injury

Injury that creates a substantial risk of death or serious permanent disfigurement, or results in long-term loss or impairment of any body part or organ.

4.0
Parameters
for the
Use of
Less Lethal
Force
1.2.2
1.3.4

The application of less lethal force by personnel in the performance of duty is:

- For self-defense or the defense of another against unlawful violence or attack to his/her person or property
- To overcome resistance to arrest, to conduct searches and seizures, and to prevent escapes from custody
- To preserve the peace, prevent the commission of offenses, or prevent suicide, or self-inflicted injury, or
- To bring an unlawful situation safely and effectively under control.

5.0
Less Lethal
Use of Force
Options

The less lethal force options are:

- **Presence/Appearance**

The image that an officer conveys may influence the outcome of the situation. The officer should be neat and well-groomed, be mindful of body language, and maintain the highest level of vigilance.

- **Verbalization**

Verbalization is verbal persuasion used by an officer attempting to defuse a situation, or verbal commands to a subject. Verbalization is present in all subsequent force options.

- **Aerosol Control Spray/Oleoresin Capsicum (OC)**

A Department issued or approved aerosol substance used to overcome resistance or an assault, deter riotous or violent behavior, or deal with armed and/or dangerous subjects in a barricaded situation.

- **Electronic Control Device (ECD/Taser)**

A Department issued or approved electronic weapon, which conducts energy designed to affect the sensory and motor functions of the central nervous system of an assaultive or resisting subject. (Refer to *Procedure 502.1 "Electronic Control Devices"* for specific guidelines on use.)

- **Chemical/OC Munitions**

OC, CN, CS gas devices and projectiles used to disperse violent, riotous crowds or deal with armed, dangerous, or barricaded subjects.

- **Physical Strength/Weaponless Hand Control**

The level of force normally required to overcome resistance that is not intended as an act of overt aggression toward the officer when an individual fails to comply with verbal instructions.

- **Restraint Techniques**

Those techniques used to take down and/or control subjects who are exhibiting active resistance. These techniques may be applied by using the hands or the baton, as trained.

- **Impact Weapons/Defensive Strikes**

Includes the use of the baton as an impact weapon, approved striking techniques to defend from the threat of serious physical injury, and Specialty Impact Munitions (SIM/beanbag) used as extended-range impact devices. (Refer to *Procedure 502.2 "Use of Specialty Impact Munitions"* for specific guidelines on use.)

- **Canine**

A trained police dog utilized in conjunction with its handler, as per *Policy and Procedure 509 "Police Canines"*.

**5.1
Tools of
Immediate
Means**

The Department issues specific equipment to be carried and used by officers as weapons and force devices. The Department also recognizes that an officer may be subject to a sudden assault that will not allow for the immediate use of these items.

In such cases, an officer may use a tool or object that is in-hand or readily accessible (i.e. flashlight, radio, ticket book, handcuffs) to fend off the immediate assault. However, as soon as is reasonable and practical, the officer shall transition from the tool of immediate means to Department-approved equipment to resolve the situation.

**6.0
Parameters for
the use of
Deadly Force
1.3.2**

Officers shall not use deadly force except in situations where the officer has a reasonable belief that the action is needed to protect himself/herself or another person from imminent death or serious physical injury.

Officers may discharge their firearms only when doing so will not unreasonably endanger innocent persons.

Officers encountering a situation where the use of deadly force is necessary should, if circumstances and safety considerations allow, issue a verbal warning first and identify themselves as a police officer.

Officers shall not use deadly force to apprehend a fleeing felon unless:

- The felony involved the use or threatened use of deadly force, and
- The escape of the felon would result in imminent death or serious physical injury to the officer, or another, if apprehension were delayed.

Officers shall not use deadly force in an attempt to threaten or subdue persons whose actions are only destructive of property or harmful to themselves.

Officers shall not discharge their firearms at a moving vehicle, unless there is an imminent threat of death or serious injury to the officer or others.

**7.0
Continuum of
Force**

Each encounter an officer is involved in should be viewed as a dynamic and evolving event. This requires the officer to continuously monitor both the situation and the actions of the subject(s) involved. Based on the officer's assessments of the perceived subject actions and situation, he/she will determine to escalate, de-escalate, or maintain the current force options.

The following model provides basic subject classifications and potential officer responses. A subject may fit into more than one classification at a given time, and it is up to the officer to reasonably apply the necessary and appropriate force options based on the situation faced at the time. The potential responses listed may not include all force options open to the officer at a point in time, based on his/her level of training and available equipment.

Classification	Response Options
Compliant subject	<p>This person complies with officer requests/orders and offers no resistance either verbal or physical. The vast majority of persons an officer will encounter are in this classification.</p> <p>Potential responses: Communication skills; physical contact to guide subject; or compliant handcuffing techniques.</p>
Passive Resistant subject	<p>The preliminary level of non-compliance. While the subject does not comply with officer requests/orders and may issue verbal non-compliance, there is no physical resistance or flight.</p> <p>An example is a person that goes limp or lies on the ground, but offers no resistance to being handcuffed or moved by officers.</p> <p>Potential response: Empty hand contact controls to guide or remove subject from an area and handcuff.</p>
Active Resistant subject	<p>Non-compliance now includes physical effort or flight by the subject that is directed at avoiding the arrest, not at assaulting the officer.</p> <p>Examples include flight by either foot or conveyance, laying on ground and locking arms under body, holding on to other persons or objects, or tensing up, twisting, or pulling away from the officer.</p> <p>Potential responses: Empty hand techniques to gain control (wrist-lock, arm-bar); distraction techniques (joint manipulation, pressure points); chemical irritants (OC, CS, CN); ECD (drive-stun, probe deployment, spark test); or baton (lever-lock and arm-lock only).</p>
Assaultive / Bodily harm	<p>The officer perceives that a subject is preparing to assault, is currently assaulting, or has assaulted the officer or another person with force that will not cause serious injury or death.</p> <p>Examples include empty hand assaults such as pushing, shoving, punching, wrestling or grasping.</p> <p>Potential responses: Defensive tactics designed to cease the non-lethal assault such as ECD (probe deployment); empty hand strikes (elbow, knee, head-butt, kicks, punches, blocks); or less-lethal weapons (baton strikes and blocks, bean-bag gun).</p>

<p>Assaultive / Serious Bodily Harm or Death</p>	<p>The officer perceives that an assault on him/herself or another has risen, or is about to rise, to a level with the potential to cause serious injury or death.</p> <p>Examples include empty hand attacker trying to disarm an officer, strangling, and assaults with weapons.</p> <p>Potential responses: While a Department-issued or approved firearm is the <i>preferred response</i> in a lethal force encounter, it is recognized that a situation may arise where an officer has been disarmed or is caught unaware by a sudden and violent assault. If such occurs, the following options should also be considered: less-lethal weapons (baton strikes to red target areas, bean-bag gun with modified points of aim to upper torso/head); or empty hand strikes or holds to lethal target areas.</p>
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8.0
Warning Shots
1.3.3

Officers shall not fire warning shots.

9.0
Medical Aid
1.3.5

Appropriate medical aid shall be provided to individuals after the use of lethal or less lethal weapons, less lethal force, or other use of force incidents, including weaponless, as defined by this policy.

Particular care should be taken if the subject:

- Is unconscious or has been unconscious
- Sustained visible injury as a result of the use of force
- Complains of injury or requests medical attention, or
- As directed by other Department Policies or Procedures.

All medical aid provided shall be noted in the officer's report. Photographs should be taken to document the existence or absence of injuries.

10.0
Duty to Report
Use of Weapon
or Physical
Force
1.3.6

Department personnel shall submit a written report to their supervisor whenever they:

- Apply force through the use of any lethal or less lethal weapon
- Apply weaponless physical force involving the use of striking techniques or utilize a restraint technique on an actively resisting person
- Take actions that result in or are alleged to have resulted in an injury or the death to another person, or
- Discharge, deliberately or unintentionally, a firearm, whether on or off duty, other than for training, ballistic identification, weapon maintenance, legal hunting, legitimate firearms competition, or target practice at an approved range.

In addition to submitting an incident report, officers shall also submit a *Firearms Discharge Report* or *Response To Resistance Report*, as appropriate.

These reports shall be reviewed and signed by the shift supervisor, then submitted to the Field Services Bureau Commander.

11.0
Review of
Reports
1.3.7
1.3.13

Copies of all reports concerning the use of weapons or the application of physical force shall be forwarded to the Shift Commander. He/she shall review the incident to determine whether the use of force was consistent with Department policy, Department training, officer safety, and public safety. In cases where the Shift Commander is involved in the incident under review, the Field Services Bureau Commander will assign review responsibilities to a supervisor not involved in the incident.

All *Firearm Discharge Reports* and *Response to Resistance Reports* shall also be forwarded to the Training Supervisor for review.

The Field Services Bureau Commander will conduct an annual analysis of these reports.

These reports shall not be given to the media except as authorized by the Chief of Police.

**12.0
Investigation
When Use of
Force Results
in a Death or
Serious Injury**

Whenever a Department employee, acting in an official capacity, performs actions or uses force that results in death or serious physical injury, the Watch Commander shall immediately notify the following:

- Chief of Police or his/her designee
- Field Services Bureau Commander
- Shift Commander, and
- Criminal Investigation Unit Supervisor.

The Chief of Police will assign a Command Officer not involved in the incident to investigate it, with the assistance of the Investigative Services Division.

During the course of the investigation, no police personnel will give information concerning the incident to any members of the public or news media without the express authority of the Chief of Police.

**13.0
Investigating
Command
Officer
Responsibilities**

The investigating Command Officer shall keep the Chief of Police informed throughout the course of the investigation. The investigating Command Officer shall complete a detailed incident report and submit it to the Chief as soon as possible.

The investigating Command Officer shall retrieve, preserve, and retain the weapon(s) used in the incident in the condition that he/she finds it, following proper evidence procedures.

**14.0
Employee
Reassignment
1.3.8**

Any Department employee whose actions or use of force in an official capacity results in death or serious physical injury, or any officer whose use of a firearm results in any injury, shall be immediately removed from line duty assignment and reassigned (i.e. administrative duty, administrative leave) pending the outcome of the investigation and administrative review.

This reassignment shall be with no loss of pay or benefits and is intended to:

- Address the personal and emotional needs of the employee involved in the incident, and
- Assure the community that verification of all facts surrounding the incident is fully and professionally explored.

The employee shall remain reassigned until the administrative review is concluded and his/her psychological needs have been met, as per *Policy and Procedure 213 "Peer Support"*.

Reassigned employees shall be available to assist the Department in the investigation of the incident.

Reassignment should not be considered by any person as a punishment or an indication of wrongdoing by the involved employee.

**14.1
Replacement
Weapon**

The Chief of Police will ensure that officers involved in a use of force that results in death or serious physical injury whose weapon(s) have been retained as part of the investigation will be issued a replacement weapon immediately. If this is not possible, the Chief will advise the officer when a replacement weapon will be available.

**15.0
Employee's
Ability to
Contact Family**

Employees involved in a use of force that results in death or serious physical injury will be provided an opportunity to contact their family as soon as possible after the incident, to prevent the family from learning about the incident through other sources.



BARNSTABLE POLICE DEPARTMENT

PROCEDURE 502.1

USE OF ELECTRONIC CONTROL DEVICES

Date of Issue: 12/19/2007

Revised: 06/04/2014

Reviewed: 12/17/2009

Effective Date: 07/25/2014

Accreditation Standards: 1.3.4-7; 1.3.9

1.0 Purpose

Consistent with the Barnstable Police Department's *Policy and Procedure 502 "Response to Resistance"*, this procedure provides guidelines for the use of Electronic Control Devices (ECD), commonly referred to as a "Taser".

It is the intent of this procedure to guide officers on the proper use of an ECD. Through the training they receive, officers will understand how to utilize an ECD as a defensive tactic option.

2.0 Authorized Use 1.3.9

Barnstable Police Department authorizes the use of Electronic Control Devices via a General Order.

Officers shall not deploy an ECD unless they are properly trained and certified.

To prevent unauthorized use, officers shall properly secure their ECD per the weapons safety and firearms storage requirements of *Policy and Procedure 303 "Departmental Weapons"*.

3.0 Prohibitions

Officers shall not use an ECD:

- In a punitive or coercive manner
- In an environment where potentially flammable, volatile, or explosive material is present (i.e. subject soaked in gasoline), or
- In an environment where a subject's fall could reasonably result in death.

4.0 Definition

Training Officer

A police officer certified by the Municipal Police Training Committee to provide ECD training, and who has completed the manufacturer's 16-hour course of instruction on the ECD.

5.0
Training
1.3.4

Officers authorized to carry an ECD will be trained and certified in accordance with a curriculum issued by the Municipal Police Training Committee and approved by the Commonwealth's Secretary of Public Safety, as mandated in 501 CMR 8.05. Training will be conducted only by certified Training Officers.

The course of instruction shall consist of the following components:

- At least four (4) hours of training
- A review of the mechanics of the ECD
- Illustration of the medical issues involved with the use of an ECD, including, but not limited to, information regarding the effects of ECDs on individuals with pre-existing medical conditions, and information/demonstration regarding the removal of wires from an individual after an ECD has been discharged
- Proficiency with an ECD, including a demonstration on the accurate discharge of an ECD and a practice discharge of an ECD by trainees
- Instruction on the use of an ECD as a less lethal force option and its relation to other Department authorized weapons, and
- A review of the Department's *Policy and Procedure 502 "Response to Resistance."*

As part of initial certification, officers are required to receive a full deployment from an ECD of 2-5 seconds in duration.

Officers are required to be recertified every two (2) years, to include a demonstration of proficiency. Recertification may include the deployment of a cartridge, a written test, or other methods determined by the Training Officer. The demonstration of proficiency will take place annually.

6.0
Methods of
Carry

Officers issued an ECD shall carry it in a manner requiring it be drawn from either a cross draw or with a support hand.

Officers shall not simultaneously have an ECD and a firearm in hand.

7.0
Reportable
Deployment

The Department will consider the use of an ECD to be a reportable deployment any time it is removed from the holster during an incident and the switch is turned on (activating the light and/or red laser) **and either**

- The trigger is squeezed, activating the electrical arc, whether contact is made on the suspect (drive stun) or not, **or**
- The trigger is squeezed and a full deployment had occurred.

Upon deploying the ECD, the officer shall energize the subject only to the extent required to overcome resistance and establish control.

Officers must be cognizant of the fact that suspects who have received an electrical discharge may not be able to comply with commands during the discharge phase.

**8.0
Levels of
Deployment**

There are several levels of ECD deployment:

Type 1: Laser Activation

The weapon is turned on, activating the laser beam as a warning/deterrent.

Type 2: Spark Activation

The weapon is turned on and the trigger is pulled, activating the electrical arc as a warning/deterrent.

Type 3: Drive Stun

Performed by removing the cartridge and squeezing the trigger, or by squeezing the trigger after the probes have been fired from the cartridge, while **maintaining direct contact** of the ECD against the suspect's body.

A Drive Stun is a compliance technique and may be used on the "actively resisting" suspect.

Type 4: Full Deployment

The deployment of the probes from the cartridge by squeezing the trigger, and the probes contact the suspect.

A Full Deployment is a compliance technique and may be used on the suspect who is "actively resisting" or "assaultive".

**9.0
Post
Deployment
Activities
1.3.5-7**

Officers shall complete the following actions after a deployment of an ECD takes place:

Deployment Level	Description
Type 1	<ul style="list-style-type: none">• No report will be required.
Type 2	<ul style="list-style-type: none">• A Response to Resistance Report shall be completed, with the incident report attached.• The appropriate supervisors will review all reports.• A copy of the reports will be forwarded to the Field Services Bureau Commander.

Type 3	<ul style="list-style-type: none"> • The affected suspect will be monitored for impaired thinking, disorientation, hallucinations and/or delusions, intense paranoia, or violent, bizarre behavior. EMS personnel will be requested to perform an evaluation of the suspect if appropriate. • Photographs of the area of contact shall be taken as soon as practical, even if no injury is visible, and secured as evidence. • The officer deploying the ECD will make the weapon available to the Watch Commander, who will secure it until such time as the electronically stored data within the weapon can be downloaded and secured. • A Response to Resistance Report shall be completed, with the incident report attached. • The appropriate supervisors will review all reports. • A copy of the reports will be forwarded to the Field Services Bureau Commander, who will ensure that all notifications required by MGL c.140 s.131 J are accomplished.
Type 4	<ul style="list-style-type: none"> • The affected suspect will be monitored for impaired thinking, disorientation, hallucinations and/or delusions, intense paranoia, or violent, bizarre behavior. EMS personnel will be requested to perform an evaluation of the suspect if appropriate. • Probes will be removed in accordance with training. If a probe is embedded in any part of the body above the neck, in the groin, or in a female's breast, EMS personnel will be requested to provide treatment and/or transportation to a medical facility as appropriate. • Photographs of the area of contact shall be taken as soon as practical, even if no injury is visible, and secured as evidence. • The probes and air cartridge shall be collected and placed into an evidence bag; probes are considered biohazards and should be handled accordingly. These items will be placed into evidence according to Departmental policy. • The officer deploying ECD will make the weapon available to the Watch Commander, who will secure it until such time as the electronically stored data within the weapon can be downloaded and secured. • A Response to Resistance Report shall be completed, with the incident report attached. • The appropriate supervisors will review all reports. • A copy of the reports will be forwarded to the Field Services Bureau Commander, who will ensure that all notifications required by MGL c.140 s.131 J are accomplished.

10.0
Medical Aid
1.3.5

Appropriate medical aid shall be provided to any person who has been the subject of an ECD deployment **and**:

- Requests medical attention
- Has a probe embedded in any part of the body above the neck, in the groin, or in a female's breast
- Does not appear to recover properly after receiving an electrical discharge
- Has been energized three or more times
- Has more than one ECD used effectively against them, or
- Has been subjected to a continuous energy cycle exceeding five seconds.

Under these circumstances, EMS or medical personnel will perform an examination of the subject, which may take place at the scene of the deployment, the police station, or a medical facility.
